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EXAMINER WATTS, JENNA A				
ART UNIT		PAPER NUMBER		
1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/550,936

Applicant(s)

SARNEEL ET AL.

Examiner

JENNA A. WATTS

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/ISD)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date 20060703

DETAILED ACTION

Claim Objections

1. Claim 11 is objected to because of the following informalities: The presence of a comma between "pizza-like" and products in line 2 of the claim appears to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding Claim 1, it is unclear how mixtures B-D relate to dry mix A, and it is also unclear how a dry mix can be described as having a particular freeze-thaw stability, baking stability and viscosity. It appears that dry mix A is somehow partially defined within the claim by subsequent mixtures B-D, which is confusing and unclear.

5. Regarding Claims 2-8 and 10-13, the term "characterized by" renders the claim indefinite because it is unclear whether the limitations following the phrase "characterized by" are required or optional.

6. Regarding Claim 6, the term "preferably" renders the claim indefinite because it is unclear whether the limitations following the term "preferably" are required or optional.

7. Regarding Claim 11, it is unclear what limitations are encompassed by the phrase "pizza-like" products.
8. Claims 14 and 15 provide for the use of a dry mix, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 14 and 15 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966). Reference is made to the rejections of Claims 14 and 15 under 35 U.S.C. 112, second paragraph, where it was stated that it is unclear what steps are being performed according to the claimed method.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fazzina et al. (U.S. Patent No. 3,852,501) in view of Suderman (U.S. Patent No. 4,588,600) and in further view of Evans et al. (U.S. Patent No. 4,208,442).

15. Regarding Claims 1, 7 and 8, Fazzina teaches a dry mix (Column 1, lines 61-63) which provides an edible food coating that will form a continuous, crisp, fat fried-like coating when applied to a wide variety of foodstuffs (Column 1, lines 40-43 and Column 3, lines 15-17). Since the mix can be applied to a variety of foodstuffs, it is deemed a multipurpose mix. Fazzina teaches that the mix is applied or spread onto foods such as meat and subsequently baked (Column 1, lines 9-10 and line 63).

16. Fazzina further teaches that the dry mix comprises corn starch hydrolyzate in an amount of 15-35% (Column 2, lines 13-15 and 36-37), farinaceous material, which is usually a flour such as wheat, corn, etc. in an amount of 8-35% (Column 2, lines 22-23 and 37-38), modified starch, which can be partially gelatinized, in an amount of 5-18%, and shortening/fat in an amount of 10-50% (Column 2, lines 60-61 and Column 3, lines 1-2), all by weight of the final dry coating mixture. The above ingredients are deemed to meet the limitations of Claims 7 and 8 because they include all or part of the range claimed by Applicant.

17. Since Fazzina teaches that wheat flour can be present, it would be expected that some amount of gluten would be present in the dry mix, however, Fazzina does not specifically teach gluten present in an amount of 10-20% by weight.

18. Suderman teaches a dry edible food composition for use in imparting a baked, coated comestible the taste, texture and appearance of a fried coated comestible (Column 3, lines 58-60), which comprises a blend of flours including corn flour (Column 4, lines 40-43) and a heat coaguable protein film former such as vital wheat gluten (Column 4, lines 45-46), employed in an amount of about 0-20%, based on the weight

of the dry mix (Column 6, lines 14-15). Suderman teaches that the vital wheat gluten is the principle structure-building ingredient of the present invention (Column 6, lines 13-14) and further teaches that it is the intention in the present invention to use the flours more as bulking agents, and to rely on controlled amount of structure-building proteins such as vital wheat gluten, to obtain an engineered structure (Column 5, lines 30-34). Suderman further teaches that the vital wheat gluten in the mix contributes to producing a coating that forms a substantially continuous film or envelope expanded in some irregular manner, which further closely simulates the appearance of a fried product (Column 4, lines 60-65 and 18-20).

19. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, for the dry mix of Fazzina to further include vital wheat gluten in range of 0-20%, as taught by Suderman, because Suderman teaches that the combination of flour and vital wheat gluten in the dry mix contribute to produce a coating that forms a substantially continuous film or envelope that closely resembles a fried food product. One of ordinary skill in the art would have been motivated to add gluten in an amount of 10-20% or 12-25% by weight to the dry mix in order to produce a food product with a continuous outer coating and the taste, texture and appearance of a fried-food product.

20. Fazzina teaches the use of a modified starch that can be partially gelatinized (Column 2, lines 50-51), but does not specifically teach the use of starch n-octenyl succinate.

21. Evans teaches a dry coating composition that is used to produce a baked coated comestible with a coating having a crisp texture and taste, a uniform coloration and appearance and good adhesion to the comestible surface as well as the taste, texture and appearance of a fried coated comestible (Column 1, lines 34-39 and 45-46). Evans further teaches adding a binding agent to the dry coating (Column 13-14) that is a starch modified using 1-octenyl succinic anhydride, and further teaches that this modified starch provides optimum emulsive and film-forming properties which are suitable in the instant invention (Column 3, lines 30-34). Starch 1-octenyl succinic anhydride is deemed synonymous with n-octenyl succinate because Kettlitz et al. teaches that n-octenyl succinic anhydride is also called n-OSA and equates it with n-octenyl succinated starches (see Kettlitz, Column 2, lines 57-58 and Column 4, line 20) and Applicant refers to n-octenyl succinate as n-OSA (See instant application, Page 9, lines 10). Furthermore 1-OSA is deemed chemically synonymous with n-OSA.

22. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the dry mix of Fazzina in view of Suderman to have used n-octenyl succinate as the modified starch, as taught by Evans, because Evans teaches that n-octenyl succinate provides optimum emulsive and film-forming properties which are suitable to produce a food product with an outer coating that has good adhesion to the food product and resembles a fried food product. One of ordinary skill in the art would have been motivated to such n-octenyl succinate in order to ensure that the coating was uniform and adhered to the food product, thereby creating a food product that is desirable to consumers.

23. Therefore, regarding the limitations of Claim 1, since Fazzina in view of Suderman and Evans teach the dry mix compositions of Claims 7 and 8, it would be expected that such a dry mix would have a freeze-thaw stability of at least 98%, a baking stability of 100% and a stable viscosity under alkaline, acidic and neutral pH conditions, absent any evidence to the contrary.

24. Regarding Claims 2 and 3, Fazzina in view of Suderman and Evans teach a dry mix that comprises 10-50% weight % fat (see Fazzina Column 2, lines 60-61 and Column 3, lines 1-2), thus a fat % of 15-28 is also encompassed by Fazzina. Fazzina in view of Suderman and Evans further teach proteins in the range of 0-20 weight % of vital wheat gluten (see Suderman, Column 4, lines 45-46 and Column 6, lines 14-15), thus a protein % of 10-20 is also encompassed by Suderman. Fazzina in view of Suderman and Evans also teach carbohydrates in the range of 15-35% of corn starch hydrolyzate (See Fazzina, Column 2, lines 13-15 and 36-37).

25. Fazzina in view of Suderman and Evans do not specifically teach carbohydrates in the range of 25-65% by weight.

26. However, it would have been obvious to one of ordinary skill in the art at the time of the invention for the range of carbohydrates as taught by Fazzina in view of Suderman and Evans to be in the range of 25-65% because Fazzina in view of Suderman and Evans teach carbohydrates present in the range of 15-35%, thus it

would be feasible that carbohydrates could be in the range of 25-35% by weight of the dry mix, which would fall in the claimed range.

27. Regarding Claim 4, Fazzina in view of Suderman and Evans are taken as cited above and teach that the proteins are vital wheat gluten (see Suderman, Column 4, lines 45-46 and Column 6, lines 14-15).

28. Regarding Claims 5 and 6, Fazzina in view of Suderman and Evans are taken as cited above in the rejection of Claim 1 and teach that the emulsifying starch is starch n-octenyl succinate (see Evans, Column 3, lines 30-34). Reference is made to the 112 2nd rejection set forth above and since the term "preferably" is open to interpretation, Fazzina in view of Suderman and Evans are deemed to meet the claim limitation when the presence of a stabilized starch n-octenyl succinate is optional.

29. Regarding Claims 9 and 13, Fazzina in view Suderman and Evans teach a completed mix, wherein the dry mix is combined with water and liquid oil to form a batter and such a combination may result in a liquid oil/water matrix in which the dry particles are fairly uniformly dispersed (See Suderman, Column 4, lines 8-10). Fazzina in view of Suderman and Evans further teach that normally this would be likely to result, on baking, in a uniform appearance and structure (See Suderman, Column 4, lines 10-11). Furthermore, since Fazzina in view of Suderman and Evans teach a completed mix, such a completed mix is deemed a spread because the completed mix or batter is

spread or applied onto a food product prior to baking (see Suderman, Column 3, lines 44-45).

30. Regarding Claim 10, Fazzina in view of Suderman and Evans are taken as cited above for the rejection of Claim 1 and teach a food composition comprising meat (See Fazzina, Column 1, lines 61-63) and the dry mix of Claim 1.

31. Regarding Claims 11 and 12, Fazzina in view of Suderman and Evans are taken as cited above and teach a savory filled product, wherein the filling is meat (see Fazzina, Column 61-64), and further teach the completed mix or batter of Claim 9 (see Suderman, Column 4, lines 8-10). Fazzina in view of Suderman and Evans further teach that it is known to coat various comestibles, such as meat, with a combination of batter and breading mixes wherein the breading is relied upon to give a crispness and appearance somewhat characteristic of a fried or deep-fat fried comestible (see Suderman, Column 1, line 31 and 37-39). Therefore, the layer of breading is on and/or around the completed mix, the breading deemed synonymous with bread or bread crumbs.

32. Regarding Claim 14, reference is made to the 101/112 rejection set forth regarding the "use" claim language. Fazzina in view of Suderman and Evans are taken as cited above in the rejection of Claim 3 and teach using the multifunctional dry mix as

an application or spread onto savory foods such as meat, that are subsequently baked (see Fazzina, Column 1, lines 9-10 and line 63).

33. Regarding Claim 15, reference is made to the 101/112 rejection set forth as above. Fazzina in view of Suderman and Evans are taken as cited above in the rejection of Claim 7 and teach using the multifunctional dry mix as an application or spread onto savory foods such as meat, that are subsequently baked (see Fazzina, Column 1, lines 9-10 and line 63).

34. Regarding Claims 16 and 17, Fazzina in view of Suderman and Evans are taken as cited above for the rejection of Claim 1. Since Fazzina in view of Suderman and Evans teach the dry mix compositions of Claims 7 and 8, it would be expected that such a dry mix would have a freeze-thaw stability of at least 99.0%, absent any evidence to the contrary.

35. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fazzina et al. (U.S. Patent No. 3,852,501) in view of Suderman (U.S. Patent No. 4,588,600) and Evans et al. (U.S. Patent No. 4,208,442), and in further view of Kettlitz et al. (U.S. Patent No. 6,235,894).

36. Fazzina in view of Suderman and Evans are relied upon as above for the rejection of Claim 5.

37. Fazzina in view of Suderman and Evans are taken as cited above but do not specifically teach the use of stabilized starch n-octenyl succinate.

38. Kettlitz teaches the preparation of a heat stable high viscosity starch obtained by reacting starch or chemically modified starches with activated chlorine under alkaline conditions (Column 2, lines 48-50) and further teaches that high viscosity starches have a tendency to burst during heating which leads to a drastic viscosity breakdown and in order to overcome such undesirable viscosity breakdown, starches may be stabilized (Column 1, lines 25-28). Kettlitz further teaches that the high viscosity stabilized starches are particularly suitable in many different preparations, for example, in the preparation of meat products and convenience foods that need to have a high viscosity and smooth texture after heating (Column 1, lines 47-49 and 51-52).

39. Therefore, it would have been obvious to one of ordinary skill in the art for the starch n-octenyl succinate as taught by Fazzina in view of Suderman and Evans to have been stabilized starch n-octenyl succinate because Kettlitz teaches that such stabilized starches are particularly suitable for the preparation of meat products and convenience foods where a high viscosity and smooth texture after heating are desirable. One of ordinary skill in the art would have been motivated to use a stabilized starch in the preparation of baked and breaded meat products in order to ensure that the resulting breading/coating has a smooth and uniform texture and that the starch remains stable and viscous during heating to allow it to act as a binding agent in the coating.

Examiner's Comment

Art Unit: 1794

40. It is noted that the amended range of 10-25 w/w% gluten stated in Claim 7 finds support in original Claims 7 and 8.

Conclusion

41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNA A. WATTS whose telephone number is (571) 270-7368. The examiner can normally be reached on Monday-Friday 8am-4:30pm.

42. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

43. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A. W./

J. Watts

Examiner, Art Unit 1794

February 26, 2009

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794